

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 22289 of 2004

Between:

Mrs. Shukla Banerjee, W/o. LT Col TK Banerjee,
R/o. 53 C Malhotra Enclave, Secunderabad (A.P.)

..... PETITIONER

AND

- 1 The Union of India, The Secretary Ministry of Defence, Government of India, New Delhi - 110 011.
- 2 The Chief of Army Staff, Army HQ, New Delhi - 110 011.
- 3 The Station Commander, Station HQ, Secunderabad (AP)
- 4 The Dy Director General NCC Gen Choudhury Road, Secunderabad (AP)
- 5 The Assistant Officer, O/o. Barrack Stores Officer(South) Secunderabad (A.P)
- 6 The Controller of Defence Accounts (Officers) Pune - 1 (MAH)

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction, orders or a Writ, more appropriately one in the nature of a WRIT OF MANDAMUS directing/declaring the action of the respondents herein "Declare the proceedings NO.105/B/Q(NCC) TKB dated 17-11-2004 of the 3rd Respondents herein directing the 5th Respondent herein to charge "Damage Rate of Rent in respect of the petitioner's husband for occupying 53-C Malhotra Enclave, Secunderabad (AP)"as being violative of the petitioner's Right to Family Accommodation during the period while her husband Lt Col TK Banerjee is in service in the Army and also contrary to the policy laid down in SAO 10/S/86 and Regulations for the Army Part II (1987 Edn) and thus ultra vires the powers of the Respondents and provisions of Article 14, 16 and 21 of the Constitution of India".

Counsel for the Petitioner:MR.VISHAL SAXENA

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (ASST SOLICITOR GEN)

The Court made the following :

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ORDER:

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This writ petition has been filed by M/s Shukla Banerjee with a prayer to declare the proceedings No.105/B/Q(NCC) TKB dated 17.11.2004 of the Station Commander, Station Head Quarter, Secunderabad-3rd respondent charging damage rent in respect of accommodation 53-C Malhotra Enclave, Secunderabd (AP) as violative of the petitioner's right to Family Accommodation during the period while her husband Lt Col TK Banerjee is in service in the Army and also contrary to the policy laid down in SAO 10/S/86 and Regulations for the Army Part II (1987 (Edn)).

LT Col T.K.Banerjee, the writ petitioner's husband was provided Family Accommodation, viz., 53-C Malhotra Enclave, while working at Secunderabad. Subsequently, he was transferred to Hubli as commanding officer 28 Karnataka Batalian, NCC. Since he did not vacate the quarter within the time allowed, proceedings have been issued imposing damage rate of rent. Questioning the proceedings issued by the 3rd respondent charging damage rate of rent, the writ petitioner has filed this writ petition.

Heard Mr.Vishal Saxena, the learned counsel appearing for the petitioners and Sri A.Rajasekhar Reddy, learned Assistant Solicitor General appearing for the respondents.

Various contentions have been made by the learned counsel for the petitioners with

reference to regulations for Army Part II (1987 Edn) as to entitlement of petitioner's husband to retain the accommodation at Secunderabad despite his transfer to Hubli. All the contentions, in my view, need not be dilated since the writ petition can be disposed of on the very maintainability.

Admittedly, the proceedings charging damage rate of rent in respect of residential accommodation has been issued to the husband of the writ petitioner. Therefore, it is for the husband of the writ petitioner to question the proceedings and not the writ petitioner. On this ground, the writ petition is liable to be dismissed. The husband of the writ petitioner is at liberty, if he so chooses, to question the proceedings.

The writ petition is dismissed accordingly. There shall be no order as to costs.

08.07.2005

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To

- 1 The Union of India, The Secretary Ministry of Defence, Government of India, New Delhi - 110 011.
- 2 The Chief of Army Staff, Army HQ, New Delhi - 110 011.
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